

REMARKS

Upon entry of the foregoing amendment, claims 33-59 remain pending in the subject application. Claims 1-32 were cancelled in a previous response to office action.

Applicant respectfully requests that the Examiner reconsider all outstanding rejections and that they be withdrawn in light of the above amendment and the following remarks.

Rejections under § 102

Claims 33-41, 43-45, 48-52 and 57-59 have been rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,573,046 (“Venooker”). The Examiner states that Venooker teaches a valve assembly for fluid delivery which is removably connected to a manifold fitting of an analytical instrument. In particular the Examiner asserts that the assembly disclosed in Venooker includes a first longitudinal extending cylindrical ring/coupling means (54), a longitudinally extending fluid conduit (134) and a “laterally extending wall (See Figures 5 and 10-11) between the fluid conduit (144) [*sic*], the laterally extending wall having a top surface (135) directed towards the processing apparatus and defining at least one vent aperture (148) creating fluid venting communication [between] the fluid reservoir (40) and top surface (135).” Applicant respectfully traverses this rejection.

Venooker does not anticipate any of the claims under 35 U.S.C. § 102(b). A proper anticipation rejection requires that “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631; MPEP § 2131. Claim 33 recites a coupler connecting a fluid reservoir and a processing apparatus. The coupler includes a first longitudinally extending cylindrical ring, a longitudinally extending fluid conduit, and a laterally extending wall between the first cylindrical ring and the fluid conduit, the wall has a top surface

directed towards the processing apparatus and defining at least one vent aperture creating *fluid venting communication* between the fluid reservoir and the top surface.

Venooker does not disclose each and every feature recited in claim 33. First, Venooker does not describe a top surface *directed towards the processing apparatus*. The Examiner indicates that the feature labeled “135” is a top surface directed towards the processing apparatus, however that feature is a shoulder that is directed towards bottle (40), not towards the processing apparatus. As described and shown in Venooker, a coupling means (54), or coupler, is used to couple “a source of liquid to be aspirated to a manifold fitting on an analytical instrument” and coupling means (54) is configured so that the manifold fitting (55) is coupled at an end opposite from shoulder (135). Venooker, col. 4, lines 33-49; and FIG. 34. Furthermore, shoulder (135) is clearly shown on a side of coupling means (54) opposite from the manifold fitting connection and directed towards bottle (40). Venooker, FIG.5. As a result, the feature indicated by the Examiner as a top surface is *not directed towards the processing apparatus* as recited in claim 33.

There also could be no *fluid venting communication* between bottle (40) and shoulder (135) through groove (148) in Venooker. When the Venooker device is assembled shoulder (135) is forced against first valve member (58) so that it is pushed away from second valve member (60). Venooker, col. 11, lines 42-46. As a result, shoulder (135) would not be in fluid venting communication with *anything* because it is pressed against another surface. In addition, assuming for the sake of argument that there was fluid communication past the abutting surfaces of shoulder (135) and first valve member (58), there would not be fluid communication between shoulder (135) and bottle (40) through groove (148) because groove (148) is not located between shoulder (135) and bottle (40). Even further, again assuming for the sake of argument that there

were fluid communication between bottle (40) and shoulder (135), the fluid communication would not be *fluid venting communication* because the fluid communication would be from bottle (40) past shoulder (135) and back to bottle (40). Because it would not provide venting it could not be *fluid venting communication*.

Because Venooker fails to disclose each and every feature recited in claim 33. Therefore claim 33 is patentable over Venooker. Claims 34-41, 43-45 and 48 depend from and include all of the features of claim 33 and therefore are also patentable over Venooker.

Claim 49, as amended, recites a method of coupling a fluid container with a processor system that includes the step of providing a fluid container and a coupler. The coupler includes a first longitudinally extending cylindrical ring, a longitudinally extending fluid conduit and a laterally extending wall between the first cylindrical ring and the fluid conduit, the laterally extending wall defines at least one vent aperture creating *fluid venting communication* between the fluid reservoir and a top surface. The method also includes the steps of coupling the coupler to the fluid container and coupling the top surface of the coupler to the processor system.

As described above, Venooker does not disclose a step of providing a coupler having at least one vent aperture that creates *fluid venting communication* between a fluid reservoir and a top surface as recited in claim 49 because there is no fluid communication between bottle (40) and shoulder (135) (i.e., top surface (135) as indicated by the Examiner). Because Venooker does not disclose each and every feature recited in claim 49, the rejection is improper. Therefore, claim 49 is patentable over Venooker. Claims 50-52 depend from and include all of the features of claim 49, and therefore are also patentable over Venooker.

Claim 57 recites an apparatus providing fluid communication between a fluid container and a processor that includes a longitudinally extending cylindrical ring, a longitudinally

extending fluid conduit and a laterally extending barrier. The fluid conduit provides *bi-directional fluid communication between the fluid container and the processor*.

Venooker does not disclose providing bi-directional fluid communication through a conduit between bottle (40) and the manifold fitting (55) of the analytical instrument. Venooker consistently describes dispensing liquid from a container and allowing gas to vent into the container from the environment. Venooker, col. 1, lines 10-24; col. 2, lines 16-19; col. 3, lines 22-44; and col. 12, lines 14-18. In the Venooker device, an air vent allows gas to flow from the environment to bottle (40) and is created by combining groove (148), chamber (80), openings (86), chamber (62) and air vent (68), with groove (148) opening to the environment and air vent (68) opening to bottle (40). Venooker, col. 12, lines 14-18. A separate liquid conduit allows liquid to flow to the analytical instrument from bottle (40) and is created by combining tube (61) which is opened to bottle (40), chamber (82), opening (140) and bore (138) which extends through nipple (134) and opens to manifold fitting 55 of the analytical instrument. Venooker, col. 12, lines 9-14.

During assembly of the Venooker device, valve assembly (50) is inserted into bottle (40) so that air vent (68) faces upwardly and tube (61) extends downwardly so that each extends only into air or liquid respectively. Venooker, col. 10, lines 12-16. That structure assures that gas only flows into bottle (40) through the air vent and liquid only flows out of bottle (40) through the liquid conduit. There is no disclosure of gas flowing out of bottle (40) or liquid flowing into bottle (40). Venooker only discloses two discrete conduits extending to entirely different portions of bottle (40) each of which only provides fluid flow in one direction. Venooker fails to disclose a conduit that provides *bi-directional fluid communication between the fluid container and the processor*.

Because Venooker fails to disclose each and every element recited in claim 57, it is patentable over Venooker. Claims 58 and 59 depend from and include all of the features of claim 57, and therefore are also patentable over Venooker.

Rejections under § 103

Claims 53-56 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Venooker in view of U.S. Patent No. 5,578,494 (“Clark”).

Claims 53-56 depend from and include all of the features of claim 49. As described above, Venooker fails to anticipate claim 49 because it fails to disclose a step of providing a coupler having at least one vent aperture that creates *fluid venting communication* between a fluid reservoir and a top surface. The addition of Clark does not overcome the shortcoming of Venooker.

Clark does not describe a fluid coupler. Clark describes a method for opening and closing a cap, or cover (31), pivotally mounted on a container (30) for storing reagents. The cover (31) includes an end for sealing the container and a tab (33) that extends from the other end of the cap that is configured to interface with an actuator. The method includes the steps of positioning a closed container adjacent to an actuating device and projecting the actuating device against the top of the tab to pivotally open the cap so that reagent may be aspirated from the container, such as by a pipettor (50). Clark, col. 5, lines 25-60; col. 43, line 65 – col. 44, line 11; and FIGS. 29-33. The Clark device does not include a fluid coupler because it utilizes a pipettor that extends into container (30) to draw a desired volume of reagent. As a result, container (30) vents directly to the environment through its opening. Because Clark does not describe a coupler, it could not describe a coupler having at least one vent aperture that creates *fluid venting communication* between a fluid reservoir and a top surface as recited by claim 49.

For the reasons described above, the combination of Clark with Venooker fails to recite all of the features recited in claim 49 and because claims 53-56 depend from and include all of the features of claim 49 they are patentable over the combination of Clark and Venooker.

Allowable Subject Matter

The Applicant respectfully acknowledges Examiner's indication that claims 42, 46 and 47 contain allowable subject matter and would be allowed if rewritten in independent form. Claims 42, 46 and 47 depend from and include all of the features of claim 33 and Applicant asserts that claim 33 is patentable as described above. Accordingly, claims 42, 46 and 47 have not been amended to place them in independent form.

Based on the foregoing, favorable consideration and allowance of the claims is solicited. If necessary, the Commissioner is hereby authorized in this and concurrent replies to charge payment (or credit any overpayment) to Deposit Account No. 50-2298 for any additional required fees.

3/10/06

Respectfully submitted,



Mitchell P. Brook

Attorney for Applicant(s)

Reg. No. 32,967

c/o

LUCE, FORWARD, HAMILTON
& SCRIPPS LLP

11988 El Camino Real, Suite 200

San Diego, California 92130

Telephone No.: (858) 720-6300